

**State of Rhode Island and Providence Plantations**  
**OFFICE OF THE HEALTH INSURANCE COMMISSIONER**  
**1511 Pontiac Avenue, Bldg 69-1**  
**Cranston, RI 02920**

**NOTICE OF ADOPTION OF**  
**OFFICE OF THE HEALTH INSURANCE COMMISSIONER REGULATION 13**

Notice is hereby given in accordance with R.I. Gen. Laws §§ 42-14-17 and 42-35-3, that the Office of the Health Insurance Commissioner (OHIC) proposes to adopt the following regulation:

**Office of the Health Insurance Commissioner Regulation 13**  
**Multiple Employer Welfare Arrangements**

This regulation is proposed for adoption because it has been determined that certain multiple employer welfare arrangements may be transacting the business of insurance in the State of Rhode Island; that certain multiple employer welfare arrangements and their actions are hazardous to the public; that in order to protect the interests of the public concerning multiple employer welfare arrangements that provide employee benefits, it is necessary to regulate such activities. Pursuant to OHIC Regulation 1, OHIC has been relying on Department of Business Regulation (DBR) Insurance Regulation 57 for regulating Multiple Employer Welfare Arrangements.

The proposed regulation, a concise explanatory statement and a document noting the changes in this proposed regulation from DBR Insurance Regulation 57 are all available for public inspection at [www.ohic.ri.gov](http://www.ohic.ri.gov) or in person at OHIC during regular business hours. OHIC is located at 1511 Pontiac Avenue, Bldg. 69-1, Cranston, Rhode Island 02920. These documents are also available by request. For copies, please email [jcogan@ohic.ri.gov](mailto:jcogan@ohic.ri.gov), call John Aloysius Cogan Jr. at (401) 462-9636, or write to OHIC at the above address and request copies.

Notice is also hereby given in accordance with R.I. Gen. Laws § 42-35-2, that the OHIC will hold a hearing beginning at 10:30 am on April 30, 2009 in the OHIC offices regarding the proposed regulation. All interested parties are invited to submit written or oral comments concerning the proposed regulation by April 30, 2009 to John Aloysius Cogan Jr., OHIC, 1151 Pontiac Avenue, Bldg. 69-1, Cranston, Rhode Island 02920, [jcogan@ohic.ri.gov](mailto:jcogan@ohic.ri.gov).

If you plan to attend the hearing, please enter OHIC from the parking lot adjacent to Building 68, through the entrance to DBR. The DBR entrance is located between Buildings 68 and 69. A telephone is available in the lobby to contact someone from OHIC. All persons who wish to give public comment will be heard at this hearing.

The hearing room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 462-9517 or TDD 711.

Christopher F. Koller  
Health Insurance Commissioner

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**OFFICE OF THE HEALTH INSURANCE COMMISSIONER REGULATION 13**  
**MULTIPLE EMPLOYER WELFARE ARRANGEMENTS**

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***Section 1***      **Purpose**

The Health Insurance Commissioner has determined that certain multiple employer welfare arrangements may be transacting the business of insurance in the State of Rhode Island; that certain multiple employer welfare arrangements and their actions are hazardous to the public; that in order to protect the interests of the public concerning multiple employer welfare arrangements that provide employee benefits, it is necessary to regulate such activities.

NOW, THEREFORE, the following is hereby promulgated as Health Insurance Regulation 13

***Section 2***      **Definitions**

- (A) (i) Multiple employer welfare arrangements ("MEWA") shall have the meaning as defined in Section 3 of Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(40) as amended, which states that a MEWA:

Means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit as described in 29 U.S.C. § 1002(1) to the employees of two (2) or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained --

- (a) under or pursuant to one or more agreements which the United States Secretary of Labor ("Secretary") finds to be collective bargaining agreements,
- (b) by a rural electric cooperative, or
- (c) by a rural telephone cooperative association.

(ii) For purposes of this paragraph

- (a) two (2) or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,
- (b) the term "control group" means a group of trades or businesses under common control,
- (c) the determination of whether a trade or business is under "common control" with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under 29 U.S.C. § 1301(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than twenty five percent (25%),
- (d) the term "rural electric cooperative" and "rural telephone cooperative association" shall have the meaning as described in 29 U.S.C. § 1002(40)(B)(iv) and (v).

- (B) "Fully insured" shall have the meaning as defined in the Employee Retirement Security Act of 1974, 29 U.S.C. § 1144(b)(6)(D) as amended, which states:

A MEWA shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

- (C) "State" shall mean the State of Rhode Island.

### ***Section 3      Certificate of Compliance Required***

A MEWA which meets either or both of the following criteria:

- A. One or more of the employer members in the MEWA is either domiciled in the State of Rhode Island or has its principal headquarters or principal administrative office in this State;
- B. The MEWA solicits an employer that is domiciled in the State of Rhode Island or has its principal headquarters or principal administrative office in this State;

shall not do business as, hold itself out as, establish, or maintain a MEWA which is an employee welfare benefit plan or any other arrangement other than an employee welfare benefit plan, (as those terms are defined in Section 3 of Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002) in this State unless the MEWA obtains and maintains a certificate of compliance or license to provide insurance in Rhode Island pursuant to Title 27 of the General Laws of Rhode Island.

***Section 4      Certificate of Compliance Not Required***

A MEWA or employee welfare benefit plan which offers or provides benefits which are fully insured by a carrier authorized to transact insurance in the State of Rhode Island or are insured by an entity otherwise specifically exempt from insurance regulation by State law or a MEWA which is exempt under the Federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(b)(6)(B), shall not be required to obtain a certificate of compliance or license and shall not be subject to this regulation.

***Section 5      Fully Insured Requirement***

A MEWA shall not be deemed fully insured if the insurance benefits are payable to the MEWA or MEWA administrator or would not be directly payable to the full extent of contract benefits to beneficiaries of the MEWA in the event of the insolvency of the MEWA.

***Section 6      Effective Date***

This regulation shall become effective as indicated below.

EFFECTIVE DATE: \_\_\_\_\_, 2009